

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of:

**REVITALIZATION OF THE AM RADIO
SERVICE**

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MB Docket No. 13-249

To: Office of the Secretary
Attn: The Commission

COMMENTS

Baybridge Communications, LLC, the licensee of AM expanded band station KDIA and standard band station KDYA, each Vallejo, California, hereby submits its Comments in response to the proposal of the Federal Communications Commission contained in *First Report and Order, Further Notice of Proposed Rulemaking, and Notice of Inquiry*, MB Docket 13-249, FCC 15-142, released October 23, 2015 (“*AM Revitalization*”) at paragraphs 75-77 to require the surrender of licenses by dual expanded band / standard band licensees. In opposition to such a surrender of licenses, the following is submitted:

SUMMARY: EXPANDED BAND LICENSES GRANTED UNDER SECTION 331(b) OF THE COMMUNICATIONS ACT SHOULD BE EXCEPTED FROM THE PROPOSED SURRENDER REQUIREMENT BECAUSE THE FCC’S STATED PURPOSE OF INTERFERENCE REDUCTION DOES NOT APPLY TO THESE NON-INTERFERING STATIONS.

1. *AM Revitalization* states, at paragraph 75, with emphasis added:

In opening up the Expanded Band, the Commission’s intent was to selectively open the ten Expanded Band frequencies to those existing AM stations that most significantly contributed to congestion and interference in the standard AM band, removing interference from the standard band

and providing those stations with more robust, interference-free service in the Expanded Band....[W]e see no justification for allowing licensee retention of high-interfering standard band stations along with the Expanded Band stations meant to replace them.

2. As explained below, the inclusion of Section 331(b) stations in the proposal to reduce interference does not serve the stated purpose of the FCC's proposal because they are not "high interfering standard band stations." Therefore they should be allowed to remain on the air serving their communities.

3. Only four radio stations were specially licensed under 331(b) and at least two remain on the air serving underserved minority communities. Standard band KDYA is one of the few all Black Gospel Radio Stations on the West Coast having serving the African-American community of the San Francisco Bay Area for more than a decade. Another remaining Section 331(b) station is WJDM, Elizabeth, New Jersey which is likewise focused on a minority and underserved community on the East Coast.

BACKGROUND

4. In 1983, the Commission began a process to improve and revitalize the AM broadcast radio service.¹ Subsequently, the Commission "adopted a national 88-station expanded band allotment plan (1605 kHz - 1705 kHz) as part of a multifaceted initiative to reduce interference in the AM band and to help revitalize the AM service."² Eligibility for allotting stations in the expanded band was based on two unrelated criteria.

¹ See *Amendment of Part 2 of the Commission's Rules Regarding Implementation of the Final Acts of the World Administrative Radio Conference, Geneva, 1979*, General Docket No. 80-739, Second Report and Order, FCC 83-511, rel. December 8, 1983, 49 FR 2357 (January 19, 1984).

² *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Marion and Johnston City, Illinois)*, DA 03-2413, para. 5 (ASD 2003), citing *Review of the Technical Assignment Criteria for the AM Service*, 6 FCC Rcd 6273 (1991) ("Expanded Band R&O"), recon. granted in part and denied in part, 8 FCC Rcd 3250 (1993) ("Expanded Band Reconsideration"), review denied sub nom. *N.A.A.C.P. v. FCC*, 40 F.3d 474 (D.C. Cir. 1994) (subsequent history omitted). See also *Implementation of the AM Band Allotment Plan*, 12 FCC Rcd 3361 (1997), recon. denied 13 FCC Rcd 21872 (1998). The Commission limited initial eligibility to occupy the expanded band to

5. One criteria was to minimize interference and congestion in the standard AM band. The other was to bring a first full-time aural service to certain large communities, as was the case with KDIA. Unlike KDIA, the vast majority of eligible applicants fell into the former category. Accordingly, the rules governing the grant of expanded band licenses were fashioned to serve the goal of minimizing congestion.

6. To achieve interference and congestion reduction in the standard AM band, the Commission announced that eligible licensees would receive dual operating authority for a five-year period.³ At the end of the five-year term, the licensee was to surrender to the Commission — at the licensee’s discretion — either the existing band or expanded band authorization. The general plan was to migrate stations out of the existing AM band:

[W]e must strictly manage migration to maximize the interference reduction benefits of each allotment awarded.⁴

With respect to license surrender:

Plainly the Commission prefers licensees to surrender the high-interference existing band authorization.⁵

existing AM licensees, concluding that allowing new applicants in the expanded band would not achieve the level of interference and congestion reduction in the existing band which the Commission thought desirable to improve the competitive standing of AM broadcasters. *See Expanded Band R & O*, 6 FCC Rcd at 6306-6308. The Commission also set forth a summary of the steps it would take to develop and implement the Allotment Plan as follows: (a) open a window for existing AM stations to file petitions to migrate to the expanded band; (b) extract relevant data concerning these stations from the petitions and enter the information into the AM database; (c) rank all such stations based on established priority groups and interference improvement factors (the more interference a station causes and receives, the higher its ranking, i.e., migration is based on the degree to which the new frequency allocation will reduce interference in the existing band); (d) produce an allotment plan which identifies stations eligible to migrate; (e) call for applications to migrate and issue a cut-off list (subjecting applicants to petitions to deny, but not competing applications), and (f) issue construction permits and licenses where appropriate. *Id* at 6316-6319.

³ *See Public Notice, Mass Media Bureau Announces Revised AM expanded band Allotment Plan and Filing Window for Eligible Stations*, 12 FCC Rcd 3185 (MMB 1997)(The Bureau stated that “[f]ollowing the grant of a construction permit application and construction of the authorized facilities, each expanded band permittee will be required to file an application for covering license on FCC Form 302. Expanded band licensees will receive authorizations permitting dual frequency operation for a period not to exceed five years”).

⁴ *Expanded Band R & O*, 6 FCC Rcd at 6306.

⁵ *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Marion and Johnston City, Illinois)*, DA 03-2413 at para. 5.

7. The *other reason* for permitting stations to operate in the expanded band —to bring full-time aural service to certain underserved communities — was brought about by an act of Congress. In 1991, § 331 of the Act was amended by the addition of new sub-paragraph (b) establishing a new policy regarding AM stations.⁶ The new sub-paragraph (b) directed the Commission to ensure that the licensee of an AM daytime-only station in a community with a population of more than 100,000 persons that lacks a local full-time aural station licensed to that community and that is located within a Class I station primary service area would be given the opportunity to provide full-time service to that community, if so requested by the licensee and if technically feasible.⁷

8. The Commission subsequently amended its rules to provide that stations defined in Section 331(b) of the Communications Act be given the first priority for migration to the expanded band.⁸ The policy behind Section 331(b) was not interference or congestion reduction. Rather, its primary purpose was to advance the provision of additional service to underserved communities (such as Vallejo, California) without regard to interference considerations.⁹ The retention by Baybridge Communications, LLC of both of the KDYA and KDIA authorizations will serve Congress’ goal without undermining the Commission’s interference reduction objectives.

⁶ P.L. 102-243, 105 Stat. 2394, approved December 20, 1991, Section 331 of the Communications Act of 1934 (47 U.S.C. 331)

⁷ *Policy Statement In the Matter of Amendment of Section 331 of the Communications Act of 1934*, 7 FCC Rcd 4905 ¶ 1 (1992). Specifically, Section 331(b) provides that:

in any case in which the licensee of an existing AM daytime-only station located in a community with a population of more than 100,000 persons that lacks a local full-time aural station licensed to that community and that is located within a Class I station primary service area notifies the Commission that such licensee seeks to provide full-time service, to ensure that such a licensee is able to place a principal community contour signal over its entire community of license 24 hours a day, if technically feasible.

⁸ *Expanded Band Reconsideration*, 8 FCC Rcd at ¶ 41. See also, § 73.30 (Note 1) of the Commission’s rules.

⁹ See § 73.30 of the Commission’s Rules, Notes 1, 2 and 4.

9. The Commission issued sixty-five permits for AM expanded band stations in 1997 and 1998, with only four granted pursuant to section 331(b) Baybridge Communications, LLC was among the recipients, receiving an authorization to construct what would eventually become KDIA, operating at 1640 kHz providing full time service to Vallejo, California.

10. Accompanying these comments at Attachment 1 is the Statement of William G. Ball, P.E.¹⁰ Mr. Ball was employed as an electronics engineer in the Media Bureau from May/June 1991 to November 2000. In that time, he was involved in the planning and implementation of the expanded band migration. He attended all meetings about the migration, wrote much of the software, and was responsible for the technical aspects of the final plan as adopted. With his impressive background, Mr. Ball is able to speak with particular authority about matters pertaining to expanded band migration.

11. Mr. Ball explains that initially only interference reduction was considered in ranking AM stations for migration to the expanded band. He goes on to point out that an additional class of station, comprising only four stations including KDIA, was given priority status for expanded band migration pursuant to Congressional mandate. He notes that while these stations would not make any significant contribution toward relieving the interference congestion on the AM band that the Commission desired, this fact was not of any significance in inter-staff discussions on the implementation of the expanded band migration plan. Indeed, he observes that the Commission record is noticeably silent on the subject of interference reduction with respect to the four stations.

12. KDIA is a member of a small minority of expanded band stations for which interference reduction played no role at all. Exempting it and the only remaining Section 331(b)

¹⁰ This Statement of William G. Ball, P.E. was originally included with the June 4, 2014 request of Baybridge Communications, LLC seeking a waiver of the Commission's rules and the removal of Special Operating Condition #2 on the KDIA license (FCC File. No. BML-20040604ADI – denied by Letter dated August 23, 2010).

station on the air to permit the retention of both licenses will insure maximum service will be provided to their communities without concomitant interference concerns. This exemption serves the public interest and is consistent with Congressional intent.

RETURN OF THE SECTION 331(b) PERMITTED STATIONS DOES NOT SERVE THE PUBLIC INTEREST OR ANY STATED COMMISSION PURPOSE.

13. As noted, the license for expanded band station KDIA was granted to Baybridge Communications, LLC because it fit the criteria of Section 331(b), enacted to provide additional service to communities such as Vallejo and not because it served the Commission's interference/congestion reduction policy objective. In contrast to most paired existing/expanded band stations, not only were Section 331(b) stations not granted with the intent to reduce interference in the AM band, but that consideration played no role in its grant.

14. The Commission reordered its expanded band allotment priorities to give licensees defined in Section 331(b), such as Baybridge Communications, LLC, a first priority based upon its finding that "this reordering will not impede our main policy objective of interference and congestion reduction in the existing AM band."¹¹ Since interference considerations played no role in KDIA's grant, the authorization should not be subject to a condition imposed specifically to address and mitigate levels of interference in the band.

15. Not only did interference considerations play no role in the KDIA grant, but, as Mr. Ball notes in his statement, the removal of KDYA from the air will not result in any substantial interference reduction benefit. Given the foregoing, it would be contrary to the public interest to bang the "square peg" of bringing full-time aural service to Vallejo, into the "round hole" of interference reduction.

¹¹ *Review of the Technical Assignment Criteria for the AM Broadcast Service*, 8 FCC Rcd 3250 para. 42 (1993), citing *Policy Statement In the Matter of Amendment of Section 331 of the Communications Act of 1934*, 7 FCC Rcd 4905 (1992).

16. The Commission should not force a paired expanded band station off the air when its continued operation does not “impede [the] main policy objective of interference and congestion reduction in the existing AM band.” The KDIA grant was not predicated on interference or congestion reduction. Therefore, its license should not have been subject to the same conditions imposed on grants intended to fulfill that objective.

17. Baybridge Communications, LLC is providing two valuable services to Vallejo, California and the surrounding areas. Both services are commercially viable operations that will continue to actively serve their community of license should the Commission permit both to remain licensed to Baybridge Communications, LLC. The Commission has in the past acted upon resulting program diversity and it should do likewise here.¹² KDYA provides needed program diversity in service of the public interest.¹³

18. Allowing KDYA/KDIA to remain in service to their communities will also advance the public interest by promoting minority ownership and employment.¹⁴ The KDYA ownership group is a diverse one containing both Hispanic ownership.. The surrender of the KDYA authorization would likely require Baybridge Communications, LLC to lay off the KDYA staff, many of whom are African-American.

19. Not only has KDYA managed to remain commercially viable, but it has flourished through service to a specialized and often underserved community. KDYA’s Black

¹² See *Amendment of Section 73.658(i) of the Commission’s Rules Concerning Network Representation of TV Stations in National Spot Sales*, 5 FCC Rcd 7280 (1990) (temporary waivers made permanent, in part, because of the public interest benefits derived from increased program diversity).

¹³ See *2002 Biennial Regulatory Review -- Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, 29 CR 564, para. 308 (2003) (“program diversity promotes the public interest by affording consumers access to a greater array of programming choices;” “greater variety of differentiated programming advances the public interest by giving consumers in a local community more selection from which they can obtain programming to meet their varied interests”).

¹⁴ *Expanded Band R & O*, 6 FCC Rcd at 6307 (“[w]e recognize, of course, that increasing the levels of minority and female ownership promotes diversity and therefore advances the public interest”).

Gospel format has substantial community support and has allowed it to continue to operate under constraints that have doomed many other stations to failure.

20. KDYA undeniably constitutes an irreplaceable service to the community. Section 73.182 (i) of the Commission's Rules precludes acceptance of any applications for new daytime only AM service.¹⁵ Thus, KDYA will not be replaced once the station is forced to go dark.

21. Furthermore, the citizens of Vallejo have a legitimate expectation that existing service will continue. Removal of service is warranted only if there are sufficient public interest factors to offset the expectation of continued service.¹⁶ As discussed above, no public interest factors exist here to offset the expectation of continued service.

22. Unlike all but one other remaining expanded band pairing, the Commission received a Congressional mandate to provide additional service to Vallejo and similarly situated communities. It did not, however, receive a mandate to deprive communities of existing local service in the achievement of that goal. By requiring that KDYA cease operations, the Commission will work against Congressional intent and its own long standing commitment to provide the best local service possible to underserved communities.

SUGGESTION FOR CONTINUED OPERATION OF THE STATIONS

23. Baybridge Communications, LLC suggests conditions that may be applicable the continued operation of KDIA:

- (a) The licensed facilities must continue to operate as independent stations — that is, no simulcasting.
- (b) Retention of both licenses will not conflict with the Commission's multiple ownership rules.

¹⁵ Baybridge Communications, LLC is not aware of any Commission plans to amend that rule.

¹⁶ *Community of License, Modification of FM and TV Authorizations to Specify a New Community of License*, 5 FCC Rcd 7094, 7097 (1990), .

(c) The two stations remain owned by the same licensee.

24. As Mr. Ball notes in his Statement, at the time the original expanded band proceeding started, the Commission's ownership rules did not permit dual-ownership of two AM stations in the same market, and it was thus forced to create a scheme by which the expanded band licensees could operate both stations during the transition period. Since that time, though, the Commission's ownership rules have changed, and the Commission now possesses the flexibility to focus on its primary goal — to ensure that maximum service is provided to communities.

CONCLUSION

25. Baybridge Communications, LLC respectfully requests that the FCC exclude the two remaining expanded band pairings from its proposal to cancel their licenses because the radio stations licensed under the Communications Act's Section 331(b) were licensed for reasons unrelated to interference reduction in the AM band and are do not include high-interfering standard band stations.

Respectfully submitted,

BAYBRIDGE COMMUNICATIONS, LLC

By 
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Managing Director

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Attachment 1
Statement of William G. Ball, P.E.

**STATEMENT OF WILLIAM G. BALL
IN SUPPORT OF A
REQUEST FOR WAIVER
APPLICATION FOR MODIFICATION OF LICENSE
KDIA – VALLEJO, CALIFORNIA
FACILITY ID NUMBER: 269285
1640 KHZ 10 KW DAY/1 KW NIGHT – ND
Applicant: Baybridge Broadcasting LLC**

I am a Consulting Radio Engineer, principal in William G. Ball, P.E. & Associates, with offices in Brookwood, Alabama.

My Education and experience are a matter of record with the Federal Communications Commission. I am a registered Professional Engineer in the Commonwealth of Virginia, Registration No. 9174 and in the State of Ohio, Registration No. 44778.

This office has been authorized by Baybridge Communications, LLC, ("Baybridge"), licensee of expanded band station KDIA(AM) and standard band station KDYA(AM), to prepare this engineering statement in support of a request for waiver of and removal of special condition 2 on the January 4, 2000 KDIA license.

1. Background

In Report and Order in MM Docket No. 87-267, *Review of the Technical Assignment Criteria for the AM Broadcast Service*, 6 FCC Rcd 6273 (1991) ("R&O") the Commission adopted sweeping technical allocation changes for AM stations, as well as the method for implementing service in the expanded band. Throughout the R&O, the stated goal was to reduce interference levels in the existing AM band. To accomplish this objective, new daytime and nighttime allocation criteria were established. In addition, a procedure was presented to encourage those stations in the existing AM band to apply for migration to the expanded band. Those stations issued permits for expanded band stations would have a five (5) year period to operate both the existing band station and the expanded band station. At the end of this period of time, either the existing band license or the expanded band license would have to be turned in for cancellation. The five-year period started on the date that the station was licensed for expanded band operation. Thus, based on these criteria, Baybridge will be forced to relinquish either the license for expanded band station KDIA or existing band station KDYA.

2. Technical Criteria.

From the period of May/June 1991 to November 2000, I was employed as an electronics engineer in the Mass Media Bureau (the "MMB" which is now the Media Bureau) of the Federal Communications Commission. From the very onset of the adoption of the R&O, I was involved in the planning and implementation of the expanded band migration. I attended all of the meetings about the migration, wrote much of the software, and was responsible for the technical aspects of the final plan as adopted. The software was written to determine the interference reduction achieved for each station applying to migrate to the expanded band, were it to actually

migrate. Interference reduction, both nighttime and daytime, was the sole criterion considered in ranking the stations for migration.

Initially the stations were ranked in three tiers: first, full time stations; secondly, daytime only stations licensed to a community of 100,000 or more, within the 0.5 mV/m-50% skywave contour of a class A station that lacked a local fulltime aural outlet (either AM or FM); and thirdly daytime only stations.

This order was based on the fact that AM stations experience greater interference at night due to skywave propagation of signals from other co-channel and first adjacent channel stations. Daytime propagation can be accurately predicted. The Commission's computer program to calculate the groundwave propagation curves is based on the article by K.A. Norton¹. Furthermore, while daytime coverage may vary with the season, i.e. summer-winter difference, knowing the effective ground conductivity allows a relatively accurate calculation of contour location and thus massive groundwave interference can be avoided.

Nighttime skywave propagation, on the other hand, depends on many additional factors such as the path length, the reflectivity in the upper atmosphere, the height of the reflective layer, the path orientation, and sunspot numbers, just to mention a few. These factors are continuously varying and have been reduced to a set of engineering charts (or a formula), which represent the best fit to known measured data. Here the uncertainty can be on the order of 5 to 6 db or more. This is experienced by the listener as a waxing and waning of the signal. The nighttime coverage of a station may vary substantially from that shown by the charts; however, it is the presence of this nighttime skywave signal, which causes such high night limit service contours. By reducing the skywave signals, i.e. in this case removing them by migration to the expanded band, the greatest improvement in AM service is to be expected.

The latter two categories for granting expanded band permits, i.e. the daytime only stations licensed to a community of 100,000 or more, within the 0.5 mV/m-50% skywave contour of a class A station that lacked a local fulltime aural outlet (either AM or FM), and the remaining daytime stations only, would not make any significant contribution toward relieving the interference congestion on the AM band that the Commission desired. This fact, while noted, was not of any significance in inter-staff discussions on the implementation of the expanded band migration plan.

The initial R&O was adopted on September 26, 1991. On July 24, 1992, the Commission adopted a Policy Statement² regarding the implementation of the congressionally mandated change in Section 331 of the Communications Acts of 1934³ which made it Commission policy to provide an opportunity for the licensee of an AM daytime only station licensed to a community of 100,000 or more, within the 0.5 mV/m-50% skywave contour of a class A station that lacked a local fulltime aural outlet (either AM or FM) to commence full-time service where

¹ Norton, K.A. Calculation of ground wave field intensity over a finitely conducting spherical earth. Proceeding of the I.R.E. Volume 29 page 623 (1941)

² Policy Statement, Amendment of Section 331 of the Communications Act of 1934, FCC-92-344, 7 FCC Rcd 4905

³ P.L. 102-243. 105 Stat 2394

it would cause no prohibited night time interference to existing stations. Three methods of implementing this policy were given,

- A. Upgrade to full-time service on the licensee's current channel,
- B. Upgrade to full-time service on an adjacent channel (i.e. within three channels of the existing channel), or
- C. Upgrade to full-time service on any other channel including the ten new channels recently added to the AM band.

One station, WJDM, Elizabeth, New Jersey formally requested such an upgrade. I personally preformed a complete allocation study. There was no other channel on which WJDM could operate full time under the Policy Statement possibilities A and B. Under Policy Statement possibility C, no channel was found in the existing AM band on which WJDM could operate full time. Thus the only alternative was to allocate the station in the expanded band. This required a modification of the expanded band allotment plan.

The modification was accomplished in MO&O FCC 93-198, adopted April 13, 1993 and Released April 29, 1993.⁴ In this MO&O, the Commission reordered the priority of the three categories mentioned above with those few (actually four) daytime only stations licensed to a community of 100,000 or more, within the 0.5 mV/m-50% skywave contour of a class A station that lacked a local fulltime aural outlet (either AM or FM) receiving the highest priority even though their contribution to the stated goal of interference reduction was negligible. Thus these four unique stations were given the first preference in allotting expanded band frequencies solely to fulfill the congressionally mandated changes in the Communications Act as mandated by P.L. 102-243. The Commission record is noticeably silent on the interference reduction this change in priority made.

Another engineering matter which had to be addressed was the fact that when the original report and order was adopted, the engineering allocation criteria were required by section 73.35 (later section 73.3555)⁵ of the Rules to insure that the 1 mV/m contour of the proposed station would not overlap the 1 mV/m contour of any other AM station owned, operated or directly controlled by the licensee. To overcome this prohibition, the condition of turning in either the expanded band license or the existing band license after a five-year dual station operation period was adopted.

The multiple ownership rules were modified in 1994 to permit common ownership of multiple AM stations in the same market. The number of commonly owed stations in a market now depends on the number of existing stations in that market and not on contour overlap. However, no change was made in the multiple ownership rules as they pertain to stations in the expanded band proceeding like KDIA and KDYA, which do not contribute to any interference reduction in the existing AM band. The fact that the ownership rules changed during the legal

⁴ Memorandum Opinion and Order, Review of the Technical Assignment Criteria for the AM Broadcast Service, MM Docket 67-267, 8 FCC Rcd 3250 (1993).

⁵ At the time the R&O was adopted, the Rule had already been redesignated 73.3555.

proceeding of the expanded band implementation was never addressed by either the MMB staff or petitioners in context of those daytime only stations receiving an expanded band allotment solely to fulfill the requirements of Section 331(b) of the Act.

3. Conclusion

Based on my personal participation in the expanding band proceeding, the Rules and Regulations of the Federal Communications Commission and the Proceedings in MM Docket 87-267, stations in migration category one, such as KDIA and KDYA were granted their expanded band facilities to fulfill a congressional mandate, not to further the reduction of existing band interference. It is my belief, based on knowledge of the history of this proceeding, that the only result of requiring KDIA or KDYA to turn in its license at the end of five years would be the termination of an operation of an AM service which serves the Vallejo, California area and will not result in the further reduction of the existing interference in the existing AM broadcast band.

This statement was prepared by myself and the statements and facts contained therein are believed to be true and correct.

WILLIAM G. BALL, P.E.



April 22, 2004